

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3820 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

R.J. JADEJA & OTHERS

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR DM THAKKAR for the Petitioners

MR NN PANDYA for the Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/08/96

ORAL JUDGEMENT

1. The petitioners, who are serving as surveyors or classers in the Revenue department, Government of Gujarat, in the office of Settlement Commissioner and Director of Land Records, filed this writ petition before this court challenging thereunder the action of the respondents of not condoning the break in their services and not offering them the benefit of their past services as is done in the case of other Land Revenue Department Employees in pursuance of the judgment and order of this

court in Special Civil Application No.1707 of 1978. The petitioners have further challenged this action of the respondents on the ground that it is illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

2. The facts of the case briefly are to be taken for appreciating the controversy raised in the present case.

All the petitioners are presently serving as surveyors or classers in the pay scales of Rs.290-480 and Rs.380-560 respectively under the respondent no.2. The petitioners were initially appointed during the period from 1949 to 1954 as surveyors and/or its equivalent posts under the respondent no.2. After putting more than 8 to 9 years of service, their services were terminated on administrative ground. After giving small break in their services, the petitioners were again taken back in the office of respondent no.2 in the year 1963. The statements of service history of the petitioners as given in Annexure 'A' are as under:

Statement of Service History of the Petitioners.

Name (Shri)	Date of appoint- ment in Land Record Deptt.	Date of retrench- ment from Land Record Deptt.	Date of reemploy- ment in Land Record Deptt.	Remarks
R.J.Jadeja	1-6-54	22-3-61	19-6-63	R.
R.B.Vyas		1-5-54	28-2-62	22-5-63 S.A.
M.J.Sampat		15-1-51	28-2-62	20-9-63 SSDF
K.R.Joshi		1-5-55	28-2-63	11-11-64 -do-
R.B.Joshi		15-7-55	22-3-61	16-9-63 R
K.C.Jadeja		1-10-55	22-3-61	22-10-63 R
S.A.Valand		25-11-49	28-2-62	18-5-63 SSD
K.M.Joshi		1-8-52	28-2-62	18-5-63 SSDF
K.G.Joshi				
C.R.Raval		25-11-49	28-2-62	23-5-64

From the aforesaid statement of service history of the petitioners, it is clear that the break in their service varies from one to two years or more. The Government had issued a resolution dated 14th March, 1963, a copy of this resolution was not produced by the petitioners, but the respondents have now submitted a copy of the said resolution alongwith affidavit-in-reply at Annexure`1'. The respondents have further submitted the order of the Revenue Department dated 18th November, 1977, at annexure `2' enclosed to the reply, and the reference of which will be made in this judgment at the appropriate place. Under the resolution dated 14th March, 1963, the Government had taken a decision of condonation of the break in service of the retrenched staff of the Land Records Department who were absorbed in other department and offices. The relevant clause of the said resolution reads as under:

As regards condonation of break in service
ordinarily breaks in temporary service should not be condoned vide explanation 3 below Rules 42 of the Revised pension Rules of 1950. In the present case, the retrenchment was on account of administration grounds, Government is pleased to decide that breaks in services should be condoned in this cases. No leaves should however, be granted to cover the interval of such breaks.

This issues with the concurrence of Finance
Department dated 7-3-1963. On this Department
file No.SVC-2 361/108910-H.

In accordance with the said resolution the break in services of the employees of Land Records Department whose services were also terminated like the petitioners, except the difference that they have been absorbed in other departments and offices, their break in services was ordered to be condoned, but petitioners who were also retrenched from the Land Records Department have been absorbed in the Land Records Department itself they were excluded. The petitioners were retrenched from services, as per their say, on the administrative grounds. In the reply the respondents have come up with the case that many of the petitioners have been retrenched on account of their not having passed the Sub-Service-Departmental Examination as required under the relevant recruitment rules as stood at the relevant time. In reply, it is

admitted case of the respondents that the services of the petitioners no.1,4 and 6 were terminated on the administrative grounds. The benefit of the resolution dated 14th March, 1963 was applicable only to those retrenched staff of the Land Records Department who were reemployed in other Government Departments. Hence a representation was made by some of the retrenched staff who were reemployed in the Land Records Department itself praying therein to extend the benefit of that resolution to them also. The matter was considered by the Government and another resolution dated 18th November, 1977 has been made.

3. In this resolution it has been provided that as regards the persons who were retrenched from Land Records Department and reemployed after 1-5-1960 i.e. after the formation of the Gujarat State in Land Records Department should be considered eligible for all concessions which have been given to those retrenched and reemployed persons of Land Records Department who have been absorbed in other departments. It has further been laid down that the persons who were retrenched for non passing of the Sub Service Departmental Examination and have been reemployed be treated as "Fresh recruits" with the clear instruction that they would not be eligible for any concessions. The Government considers that class of persons at par with persons retrenched for not passing the S.S.D. examination and reemployed in other departments.

4. So two classes have been carved out under the resolution dated 18th November, 1977 of the retrenched employees of the Land Records Department though all have been reemployed in the same department i.e. one who have been retrenched on administrative ground and another who have been retrenched for non passing of S.S.D. examination. This classification made as aforesaid gave rise to the litigation before this court.

5. Several of such retrenched staff of the Land Records Department who were reemployed in the Land Record Department itself and who were not given the benefit of the condonation of break in service filed petition being Special Civil Application No.1707 of 1978 before this Court claiming the benefit of the Government resolution dated 14th March, 1963. This court has decided that petition on 24th November, 1980 and the operative part thereof has been reproduced both by the petitioners and the respondents in their pleadings. The operative part reads as under:

The petition is allowed. The Government is directed to apply annexure 'F' to the petitioners, whose details are set out in Schedule annexed to this judgment, and to condone the break or breaks in their case and to give them benefit of their past service as is done in case of other Government servants of the Land Records Department and if the benefits of the Government Resolution, Annexure-K, get attracted in view of my abovementioned interpretation of the Government Resolution. Annexure-f, they also will follow as matter of corollary. Rule is accordingly made absolute with no order as to costs.

After the decision of this court in the aforesaid petition, the Government has by Government resolution dated 13th March, 1981 extended the benefit of Government resolution dated 18-11-1977 only to the petitioners of the Special Civil Application No.1707 of 1978. A copy of this resolution has been filed as annexure 'B' to the Special Civil Application filed by the petitioners. When the petitioners were not given the similar benefit, they approached this court by this petition.

6. The counsel for the petitioners contended that when this court has decided that all the retrenched employees of the Land Records Department who have been absorbed on or after 1-5-1960 in the Land Records Department itself are entitled for the benefit of the condonation of break in service, the same benefit should have been extended to them also and could not have been restricted to the employees who are the petitioners in Special Civil Application No.1707 of 1978. The judgment given by this court in the Special Civil Application No.1707 of 1978 was deciding a policy and merely because the petitions in this petition were not the party to that petition they could not have been denied of the benefit. The denial of the benefit of the judgment to the petitioners who belong to the same class of the petitioners in the said petition is a discrimination made by the respondents.

7. On the other hand, learned counsel for the respondents contended that the benefit of the decision of this court was restricted only to the petitioners in the Special Civil Application No.1707 of 1978 and that benefit could not have been given to these petitioners.

8. I have given my thoughtful consideration to the submissions made by learned counsel for the parties. The learned counsel for the respondents has not disputed that

the benefit of the resolution dated 18th November, 1977 has been extended by this court to all the retrenched employees of the Land Records Department absorbed in the Land Records Department itself after 1-5-1960 whether they were retrenched for administrative reasons or for non passing of S.S.D. examination. I have gone through the contents of the resolution dated 18th November, 1977. The benefit of the condonation of the break in service to the retrenched employees of the Land Records Department who have been absorbed in the same department was not given to those employees who were said to be retrenched on the ground of non passing of S.S.D. examination. The rest of the employees have been given the benefit. The Special Civil Application No.1707 of 1978 has been filed undisputedly by those class of persons who belong to the category of "retrenched for non passing of S.S.D. examination". The Special Civil Application No.1707 of 1978 has been decided by this Court on 24th November, 1980. After the decision in the aforesaid Special Civil Application, the respondents should have extended the benefit of the same to all the retrenched employees who have been absorbed in the Land Records Department irrespective of the fact whether they have approached to this court or not. In such matter, when the court has decided regarding the applicability of the benefit of the condonation of break in service to a class then all the persons belonging to that class are entitled for the said benefit. In case the benefit of the decision of this Court is denied to the persons who are in a class to which the petitioners in that litigation belonged will make a hostile discrimination. No discrimination should have been made by the respondents amongst the class on the basis of the fact that the decision has been given in the case of the petitioners and not for the others. This approach of the respondent is against the basic principles of fair play and natural justice. The respondent no.1 is a welfare state and the respondent no.2 is a functionary thereof. The welfare State should not deny the benefit of the judgment of this court to other persons who are similarly situated, only on the ground that they have not approached to this court when the benefits in that case were not restricted to the petitioners in that Special Civil Application only. This approach of the respondents will not only make a discrimination, but it will result in unnecessary litigations to this court, and secondly low paid employees will be burdened by the costs of the litigation. Here is a case where the petitioners after this Special Civil Application No.1707 of 1978 made a representation to the respondents for giving them the benefit of condonation of break in service. Such

representation has been made by the petitioners on 7-4-1979. The petitioners in para no.10 have come up with a case that they made several representations to the respondents and last representation was made by them somewhere in the year 1979. A copy of the representation dated 7-4-1979 is submitted as annexure 'C'. The petitioners have further stated that the respondents have not given reply to the representations made by the petitioners. They have further come up with a case that the petitioners were awaiting a favourable decision from the respondents and recently the petitioners have come to know that the similarly situated employees have filed a Special Civil Application No.1707 of 1978 wherein the directions have been issued by this Court to condone the break in service of those persons, and the Government has issued a resolution in that respect. These facts are uncontroverted. It is a case where the similar demand was made by the petitioners and that was pending for consideration before the respondents.

9. In the reply, the respondents have come up with the only justification, not to give the petitioners the same benefit, that the benefit given to the petitioners of the Special Civil Application No.1707 of 1978 could not be extended to the petitioners herein as they were not the party to that Special Civil application. This is absolutely unjustified, unreasonable and arbitrary justification. It is really shocking that the Government has declined to accept the representation of the petitioners only on the aforesaid ground. It is not expected of the Welfare Government to behave and deal with its own employees in the aforesaid manner and fashion. There is no defence in substance and whatever defence taken is taken for the sake of defence. While making such a defence the respondent forgot that the petitioners have approached this court in the year 1984 by this Special Civil Application. The respondents have acted most unfairly and unreasonably in the present case. I do not find any justification with the ground which has been given out for depriving of the benefit of the resolution dated 18th November, 1977 to the petitioners.

10. In the result, this Special Civil Application succeeds and the same is allowed. The judgment regarding the right of the petitioners of condonation of break in their service has been decided by this court long back and that decision has been given effect to, but restricted only to the petitioners therein. In these circumstances, the petitioners were constrained to approach this Court. The petitioners are low paid employees and because of unjustified attitude of the

respondents they have to approach to this court for a relief which should have been granted to them by the respondents at their own end. The writ petition is allowed with the costs of Rs.5000/- which is to be paid in equal proportion to the petitioners by the respondents. It is hereby declared that the petitioners are entitled for the benefit similar to that of the petitioners in Special Civil Application No.1707 of 1978 which has been extended by the respondents to them under its resolution dated 13th March, 1981. The respondent no.2 is further directed to undertake the exercise to determine the benefit for which the petitioners are entitled under this judgment within a period of four months. Thereafter the amount, if any, payable to the petitioners shall be determined within a period of two months therefrom and the payment thereof shall be made within two months next. The petitioners shall be entitled for the interest on the amount, if any, which is found payable to them under this order at the rate of 12% per annum from today. Rule is made absolute in the aforesaid terms.

zgs/-